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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1929

No. 351

F. W. STEWART MANUFACTURING CORPORATION, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 29, 1929

CERTIORARI GRANTED NOVEMBER 4, 1929

(34,482)

(34,482)

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 351

F. W. STEWART MANUFACTURING CORPORATION,
a Corporation,

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MAY IT PLEASE THE COURT: Your petitioner, F. W. Stewart Manufacturing Corporation, by its attorney, respectfully prays for a writ of certiorari to review the judgment of the United States Court of Claims in the above entitled cause.

Statement of the Case

The petitioner corporation is engaged in the manufacture, sale and distribution of repair and replacement parts for speedometers used on automobiles.

Petitioner corporation does not manufacture complete speedometers, but only certain speedometer parts, intended for use in replacing parts of speedometers which have become worn or damaged.

The Treasury Department has held that certain of the speedometer parts manufactured by petitioner corporation are *not* "parts" or "accessories" for automobiles within the meaning of the taxing statutes, and has refunded the taxes illegally collected on sales of the same, but holds that other speedometer parts manufactured by petitioner corporation (and which bear a similar relation to the automobile to those held nontaxable) are "parts" or "accessories" within the meaning of the taxing statutes.

Between the dates October 1, 1921, and October 31, 1925, petitioner corporation was required to pay to the Government on sales of such speedometer parts, taxes in the amount of $4,624.89. Claim for refund of this amount of tax so paid was duly filed by petitioner corporation, and

rejected or disallowed by the Commissioner of Internal Revenue, whereupon suit for recovery of these taxes was filed in the United States Court of Claims.

Subdivision (3) of Section 900 of the Revenue Act of 1921 (42 Stats. 227), and subdivision (3) of Section 600 of the Revenue Act of 1924 (43 Stats. 253), under alleged authority of which the taxes sought to be recovered were levied, assessed, collected and paid, imposed a tax on the manufacturers' sale of "parts *or* accessories" for any of the articles *enumerated in subdivision* (1) *or* (2) of such sections.

The articles enumerated in said subdivisions (1) and (2), as found by the Court of Claims, in its decision in the case of *Martin Rocking Fifth Wheel Co.* v. *The United States* (60 Ct. Cls. 466), are only (1) automobile trucks (2) automobile wagons (3) other automobiles, and (4) motor cycles. Speedometers are not enumerated in subdivision (1) or (2), but are "accessories," enumerated or included in subdivision (3) (See paragraph 2, Article 16, Treasury Department Regulations No. 47, Revised December, 1921), and it is the contention of petitioner corporation that since subdivision (3) of Sections 900 and 600 of the Revenue Acts of 1921 and 1924 imposed a tax on sales of "parts" for only the articles enumerated in subdivisions (1) and (2), and not on sales of parts for articles enumerated in subdivision (3) of those sections, the taxes so paid by it were collected without authority of law.

The case presents for determination by the Court the question of whether speedometer parts manufactured and sold by petitioner corporation are "parts" for articles enumerated in subdivision (1) or (2), within the meaning of subdivision (3) of Sections 900 and 600 of the Revenue Acts of 1921 and 1924.

[fols. 2 & 3] Reasons Relied on for Allowance of the Writ

The writ herein sought should issue for the following reasons:

1. The Court of Claims has decided an important question of Federal taxation which has not been, but should be, settled by this Court.

2. The decision of the Court of Claims is contrary to the principle laid down by that Court in interpreting subdivision (3) of Section 900 of the Revenue Act of 1918 (40 Stats. 1122), which is identical to the provision of the 1921 Act here involved, in the case of *Martin Rocking Fifth Wheel Co.* v. *The United States*, 60 Ct. Cls. 466.

3. The decision of the Court of Claims is inconsistent with the decision rendered by itself, on February 4, 1929, in the case of the *Auburn Rubber Co.* v. *The United States*, interpreting the same provision of the taxing statute here involved, in which decision it was held that patches and reliners for tires enumerated in subdivision (3) were not subject to the tax imposed under that subdivision.

4. The decision of the Court of Claims violates the rule laid down in the cases of *Gould* v. *Gould* (245 U. S. 151) and *United States* v. *Merriam* (263 U. S. 179), heretofore universally followed by the Federal Courts, in that it extends the application of Section 900(3) of the Revenue Act of 1921 and Section 600(3) of the Revenue Act of 1924, so as to bring within their scope articles or things which are not enumerated or included therein.

Wherefore your petitioner respectfully prays that a writ of certiorari to review the judgment of the Court of Claims herein may be granted.

George M. Wilmeth, Attorney for Petitioner, Transportation Building, Washington, D. C.

[fol. 1] IN THE COURT OF CLAIMS

No. F-318

F. W. STEWART MANUFACTURING CORPORATION, a Corporation, Claimant,

vs.

THE UNITED STATES, Defendant

I. PETITION—Filed October 13, 1926

To the Honorable the Court of Claims:

The claimant, F. W. Stewart Manufacturing Corporation, respectfully represents to the Court:

I. That it is, and at all times mentioned herein has been, a corporation organized, existing and doing business under

and by virtue of the laws of the State of Illinois, with its office and principal place of business located at Chicago, in that State.

II. That claimant is the manufacturer and distributor of parts for automobile speedometers, among which are speedometer gears, drive chains, or flexible shafts, and flexible housings therefor. It does not manufacture or sell complete speedometers; the articles manufactured and sold by claimant, as herein enumerated, are designed and intended to be used, and are used, as replacement parts for such speedometers.

III. That Section 900 of the Revenue Act of 1918 (40 Stats. 1122) provided:

[fol. 2] That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased——

(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

(2) Other automobiles and motor cycles (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum;

(3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum; * * *

Pursuant to the provisions of said Act, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, on or about December 27, 1920, promulgated certain regulations, known as "Regulations No. 47 (Revised)," relating to the Excise Taxes on Sales by the Manufacturer under Section 900 of the Revenue Act of 1918, which said regulations provided, in part, as follows:

Art. 15. Definition of Parts.—A "part" for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use and which is primarily adapted only for use as a component part of such vehicle.

* * * * * * *

[fol. 3] Art. 16. Definition of Accessories.—An "accessory" for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation. * * *

IV. Section 900 of the Revenue Act of 1921 (42 Stats. 227) reenacted or continued in force, effective from January 1, 1922, the taxes imposed by Section 900 of the Revenue Act of 1918, supra. And a revised edition of Regulations No. 47 issued by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury on or about January 6, 1922, continued in force, without change, the provisions of Articles 15 and 16 above quoted.

V. Section 600 of the Revenue Act of 1924 (43) Stats. 253, 322), approved June 2, 1924, provided:

On and after the expiration of thirty days after the enactment of this Act there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentage of the price for which so sold or leased—

(1) Automobile truck chassis and automobile wagon chassis sold or leased for an amount in excess of $1,000, and automobile truck bodies and automobile wagon bodies sold or leased for an amount in excess of $200 (including in both cases, tires, inner tubes, parts, and accessories there-

for sold on or in connection therewith or with the sale thereof), 3 per centum. A sale or lease of an automobile truck or of an automobile wagon shall, for the purposes of this subdivision, be considered to be a sale of the chassis and of the body;

[fol. 4] (2) Other automobile chassis and bodies and motor cycles (including tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum. A sale or lease of an automobile shall, for the purposes of this subdivision, be considered to be a sale of the chassis and of the body;

(3) Tires, inner tubes, parts, or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 2½ per centum. This subdivision shall not apply to chasses or bodies for automobiles, trucks, automobile wagons, or other automobiles; * * *

And pursuant to the provisions of said Act, on or about August 29, 1924, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, promulgated or issued a revised edition of said "Regulations No. 47 (Revised)" in which it was provided, inter alia, as follows:

Art. 16. Parts or Accessories—Definition of Parts.—A "part" for an automobile truck, automobile wagon, or other automobile chassis or body, or motor cycle, is any article designed or manufactured for the special purpose of being used as, or to improve, repair, or replace, a component part of any such vehicle or article, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, or which is primarily adapted only for use as a component part of such vehicle or article.

Definition of Accessories.—An "accessory" for an automobile truck, automobile wagon, or other automobile chassis or body, or motor cycle, is any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, or any article

[fol. 5] which is primarily adapted for use in connection with such vehicle or article whether or not essential to its operation or use. * * *

VI. Between the dates of October 1, 1921, and October 31, 1925, there were levied, assessed against, and collected from claimant, and paid by the claimant to the United States Collector of Internal Revenue at Chicago, Illinois, taxes in the amount of $4,624.89 on sales by claimant of speedometer gears, speedometer drive chains or flexible shafts, and flexible housings for such drive chains or shafts, as described in paragraph II of this petition. Said taxes, all which were purported to have been levied, assessed, and collected under the provisions of subdivisions (3) of Sections 900 of the Revenue Acts of 1918 and 1921 and subdivision (3) of Section 600 of the Revenue Act of 1924, were levied, assessed, and collected on sales of articles and for periods as follows:

Shaft and Housing Sales

Year	Tax
1921 (October, November, December)	$125.42
1922	1,168.30
1923	1,007.31
1924	775.70
1925	607.91
Total	$3,684.64

[fol. 6]

Gear Sales

1921 (October, November, December)	$36.72
1922	292.09
1923	280.62
1924	216.63
1925	114.19
Total	$940.25

VII. On or about November 27, 1925, claimant filed with the Commissioner of Internal Revenue a claim for refund of said sum of $4,624.89 for reasons set forth therein as follows:

The above amount as paid as excise tax on our sales of parts of accessories (speedometer gears, drive chains and flexible housings, etc.). We do not manufacture complete speedometers, but only replacement parts therefor.

Subdivision (3) of Sections 900 of the Revenue Acts of 1918 and 1921, and subdivision (3) of Section 600 of the Revenue Act of 1924, imposed a tax upon the manufacturer's sale of "Tires, inner tubes, parts or accessories for articles enumerated in subdivision- (1) and (2)" of those Sections. The articles enumerated in subdivisions (1) and (2) are "automobile trucks," automobile wagons," "other automobiles" and "motor cycles." Accessories are not enumerated in subdivisions (1) and (2), but only parenthetically included therein for the purpose of fixing the tax rate thereon, when sold with or as a part of an article enumerated in (1) or (2). It is clear, therefore, that parts of accessories sold by us were not taxable under the law, and we accordingly demand that the amount paid thereon be refunded. * * *

In a letter from the Commissioner of Internal Revenue dated March 4, 1926, claimant was advised of the rejection of said claim as follows:

[fol. 7] Reference is made to your claim for refund of $4,624.89, representing manufacturers excise tax for the period October, 1921, to October, 1925, inclusive.

Your claim is based upon the contention that the Revenue Acts of 1918, 1921, and 1924, did not contemplate the taxing of such articles as flexible shaftings, flexible housings and fiber gears which are merely parts of speedometer assemblies. You state that you did not manufacture complete speedometers but merely manufacture replacement parts which you believe are not subject to tax and you therefore request refund of tax paid by you on sales of such articles.

You are advised that the Bureau has consistently held that such articles as flexible housings and shafts and fiber gears are properly subject to tax under the various Revenue Acts, which decision was not reached until after the question of the taxability of these articles had been very carefully considered.

No evidence has been presented by you which would tend to alter the opinion of the Bureau with respect to these articles and your claim is accordingly rejected.

Subsequently claimant requested that its said claim be reopened and reconsidered for the reason that the letter of rejection above quoted did not take into consideration the contentions raised by claimant in its claim for fund. In a letter dated April 24, 1926, claimant was advised by Deputy Commissioner R. M. Estes as follows:

Reference is made to your claim for refund in the amount of $4,624.89 which was rejected under date of March 4, 1926, covering tax paid on sales of flexible shaftings, flexible housings, fiber gears, etc., during the period October, 1921, to October, 1925, inclusive. You now request that this claim [fol. 8] be reopened and reconsidered on the ground that these articles are parts of accessories and therefore not subject to tax under subdivision (3) of sections 900 of the Revenue Acts of 1918 and 1921 and subdivision (3), section 600 of the Revenue Act of 1924.

You are advised the contentions raised by you have been considered by this office in many other cases as well as connection with your claim and the statements on which you base your request for reopening of your claim do not appear to present any new evidence and are not considered sufficient to warrant a change in the established rulings of the office of the reopening of the claim.

VIII. Claimant is advised by counsel, and therefore avers, that the taxes collected from it on the sale of replacement parts for speedometers, as aforesaid, are illegal and erroneous and were illegally and erroneously assessed and collected by the United States of America through said Collector of Internal Revenue at Chicago, Illinois, without warrant or authority of law, for the following reasons:

Subdivisions (3) of sections 900 of the Revenue Acts of 1918 and 1921, and subdivisions (3) of section 600 of the Revenue Act of 1924, under the provisions of which the taxes the recovery of which is herein claimed were assessed and collected, imposed a tax only on the sales of "* * * parts or accessories" for articles enumerated in subdivisions (1) and (2) of said sections.

A speedometer is an accessory for an automobile, or, in other words, it is one of the articles enumerated in subdivision (3) of sections 900 of the Revenue Acts of 1918 and 1921 and subdivision (3) of section 600 of the Revenue Act of 1924.

[fols. 9 & 10] Neither of the Revenue Acts above cited contains any provision authorizing the imposition of any tax on the sale or lease of "parts" for any of the articles enumerated in subdivision (3) of sections 900 of the Revenue Acts of 1918 and 1921 and subdivision (3) of section 600 of the Revenue Act of 1924.

Wherefore claimant claims from the United States the sum of $4,624.89, with interest at the rate of six (6) per centum per annum, as provded by law.

IX. No action upon this claim other than herein stated has been had before Congress or any other of the departments of the Government. Claimant is a citizen of the United States, and has at all times borne true allegiance to the Government of the United States and has not at any time in any way aided, abetted or given encouragement to rebellion against said Government; it is the sole owner of the claim herein stated, and no part of said claim has ever been sold, assigned or discharged, and it is justly entitled to the amount herein claimed from the United States after allowing all just credits and off-sets.

F. W. Stewart Manufacturing Corporation, Claimant, by George M. Wilmeth, Attorney for Claimant, Transportation Building, Washington, D. C.

Duly sworn to by George M. Wilmeth. Jurat omitted in printing.

[fol. 11] II. General Traverse—Filed December 11, 1926

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

III. Argument and Submission

On February 4, 1929, this case was argued and submitted on merits by Mr. George M. Wilmeth, for the plaintiff, and by Mr. Ralph C. Williamson, for defendant.

[fol. 12]

IV. Special Findings of Fact, Conclusion of Law, and Memorandum by the Court—Filed March 11, 1929

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

SPECIAL FINDINGS OF FACT

I

The plaintiff is, and at all times mentioned herein has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at Chicago, in that State.

II

Plaintiff was, during the period in question, engaged in the manufacture and sale of parts for automobile speedometers, particularly speedometer gears, drive chains, or flexible shafts, and flexible housings for such shafts. Plaintiff did not manufacture or sell complete speedometers but only the parts heretofore enumerated. Said articles were especially designed, manufactured, and sold for use on or in connection with automobiles and are not adapted to any other purpose or use. The excise taxes in question were paid with respect to said articles.

III

Between October 1, 1921, and October 31, 1925, there were levied and assessed against, and collected from plaintiff, and paid by it through the United States Collector of Internal Revenue at Chicago, Illinois, on sales of speedometer gears, drive chains or flexible shafts, and flexible housings for such chains or shafts, as hereinbefore described, taxes in the amount of $4,624.89. Subsequently claim for refund was filed with the Commissioner of Internal Revenue, which claim was rejected.

[fol. 13] IV

Flexible drive chains, or shafts and housings, are used on other machines than automobiles, but those taxed in this case are specially manufactured and designed for use on speedometers which are used on automobiles.

V

Plaintiff is a citizen of the United States, and it and its officers and directors have always borne true allegiance to the Government of the United States, and have never voluntarily aided, abetted, or given encouragement to rebellion against said Government. No part of the claim sued for has ever been sold, assigned, or satisfied.

Conclusion of Law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover and its petition should be dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

Memorandum

The only question in this case is whether speedometer gears, drive chains, or flexible shafts, and flexible housings for such shafts, especially designed, manufactured, and sold for use on automobiles, and which were adapted for no other purpose or use, subjected plaintiff to liability for the payment of excise taxes under the provisions of section 900 of the revenue act of 1921, 42 Stat. 291, and section 600 of the revenue act of 1924, 43 Stat. 322, which levy taxes on parts and accessories sold on or in connection with automobiles, automobile trucks, and automobile wagons.

We think the articles in question were clearly subject to the tax. It is a matter of common knowledge that no automobile is now made and sold in this country without a speedometer, and that owing to the speed regulations which

universally prevail it would be difficult to operate an automobile without this device. In fact an automobile would not be complete without a speedometer.

The Martin Rocking Fifth Wheel Co. v. United States, 60 C. Cls. 466, is not an authority to the contrary. In that case the article sought to be taxed was not a part of the automobile, but merely a device used in connecting a trailer therewith. In fact, it in no way affected the operation of the automobile itself. The case is controlled by the decisions in Cole Storage Battery Co. v. United States, 65 C. Cls. 164, and Walker Mfg. Co. v. United States, 65 C. Cls. 394.

It follows that plaintff's petition must be dismissed. It is so ordered.

[fol. 14] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 11th day of March, A. D., 1929, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record herein, the amount thereof to be ascertained by the clerk and collected by him according to law, which amount is found to be $32.34.

VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On May 10, 1929, the plaintiff filed a motion for a new trial.

On June 3, 1929, the court entered the following order on said motion:

Order

It is ordered this 3rd day of June, 1929, that the plaintiff's motion for new trial be and the same is overruled.

[fol. 15] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,482. Court of Claims. Term No. 351. F. W. Stewart Manufacturing Corporation, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed August 29, 1929. File No. 34,482.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 4, 1929

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is assigned for argument with cases Nos. 127 and 275 as one case.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.